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CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

HRL

DAVID WATTS, an individual

Plaintiff,

vs.

AERIS COMMUNICATIONS, INC., A
CALIFORNIA CORPORATION;
MARC JONES, AN INDIVIDUAL; and
DOES 1 through 10, inclusive,

Defendants.

Case No.:

CV 11 - 0662

**COMPLAINT FOR UNPAID
OVERTIME UNDER CALIFORNIA
LABOR CODE, MEAL BREAKS,
IMPROPER PAY STUBS, WAITING
TIME PENALTIES, OVERTIME
UNDER THE FLSA, MINIMUM
WAGE VIOLATIONS, AND
UNFAIR BUSINESS PRACTICES**

DEMAND FOR JURY TRIAL

Plaintiff, DAVID WATTS, alleges:

JURISDICTION

1. This Court has jurisdiction over this matter because this complaint alleges a federal question in that violations of 29 U.S.C. § 201 et seq. are alleged.

2. This court has supplemental jurisdiction of all the State law claims under 28 U.S.C. § 1367(a). The State law claims are all related to the same facts – namely whether Plaintiff performed work and was not paid overtime wages and whether that failure to pay was willful. The failure to provide proper pay check stubs is also directly related to the FLSA claims because Plaintiff is alleging that the pay

1 check stubs are inaccurate because they did not list the overtime required by the
2 FLSA. The waiting time penalty claim is directly related to whether the failure to
3 pay overtime required by the FLSA was willful. As such, all the claims make up the
4 same case or controversy under Article III of the United States Constitution.

5 **GENERAL ALLEGATIONS**

6 3. This Court is the proper court and this action is properly filed in the
7 County of Santa Clara and in this judicial district because Defendants do business in
8 the County of Santa Clara, and because Defendants' obligations and liabilities arise
9 therein, and because the work that was performed by Plaintiff in the County of Santa
10 Clara is the subject of this action.

11 4. The true names and capacities of DOES 1 through 10 are unknown to
12 Plaintiff, who therefore sues the DOE Defendants by fictitious names. Plaintiff will
13 amend this Complaint to show their true names and capacities when they have been
14 ascertained. Plaintiff is informed and believes, and hereon alleges, that some such
15 Doe defendants are residents of California.

16 5. Plaintiff is informed and believes that Defendants, each and all of them,
17 at all times material hereto, were the joint employers, parent companies, successor
18 companies, predecessors in interest, affiliates, agents, employees, servants, joint
19 venturers, directors, fiduciaries, representatives, and/or coconspirators of each of the
20 remaining Defendants. The Defendants, unless otherwise alleged, at all times
21 material hereto, performed all acts and omissions alleged herein within the course
22 and scope of said relationship, and are a proximate cause of Plaintiff's damages as
23 herein alleged.

24 **PARTIES**

25 6. Plaintiff DAVID WATTS ("WATTS") was jointly employed by
26 Defendants from December 3, 2007 through February 6, 2009.

27 7. Defendant AERIS COMMUNICATIONS, INC. ("AERIS") is A
28 California Corporation doing business in the County of Santa Clara, State of

1 California.

2 8. Defendant MARC JONES ("JONES") is an individual doing business in
3 the County of Santa Clara, State of California.

4 **FIRST CAUSE OF ACTION**

5 **FAILURE TO PAY MINIMUM WAGE IN VIOLATION OF CALIFORNIA**
6 **LABOR CODE**

7 **(AGAINST AERIS and DOES 1-5)**

8 9. Plaintiff refers to and incorporates by reference Paragraphs 1 through 8.

9 10. This cause of action is brought against AERIS and DOES 1-5, jointly
10 and individually.

11 11. Pursuant to Cal. Labor Code § 1197, payment of less than the minimum
12 wage fixed by the Labor Commission is unlawful.

13 12. While employed by Defendants, Plaintiff was not paid at least the
14 minimum wage for all hours worked.

15 13. Plaintiff was not paid the proper minimum wage by Defendants for at
16 least one pay period within the three (3) years prior to initiating this lawsuit.

17 14. Defendants know or should know the pay periods in which minimum
18 wage was not paid as well as the amount of underpaid wages.

19 15. Under California Labor Code, Plaintiff is to recover the minimum wage
20 for all hours worked.

21 16. As a proximate result of the aforementioned violations, Plaintiff has
22 been damaged in an amount in excess of \$1,280, and subject to proof at time of trial.

23 17. Pursuant to Labor Code §§ 218.6, 1194, and California Code of
24 Regulations, Title 8, §11040, Plaintiff is entitled to recover damages for the
25 nonpayment of the minimum wage for all hours worked, interest, reasonable
26 attorney's fees and costs of suit.

27 18. Pursuant to Labor Code § 1194.2, Plaintiff is entitled to recover an
28 additional amount equal to the unlawfully unpaid wages as liquidated damages. As

1 such, Plaintiff prays for an additional amount of \$1,280.

2 **SECOND CAUSE OF ACTION**

3 **FAILURE TO PAY OVERTIME COMPENSATION UNDER CALIFORNIA**
4 **INDUSTRIAL WELFARE COMMISSION ORDERS AND CALIFORNIA**
5 **LABOR CODE**

6 **(AGAINST AERIS and DOES 1-5)**

7 19. Plaintiff refers to and incorporate by reference Paragraphs 1 through 18.

8 20. This cause of action is brought against AERIS and DOES 1-5, jointly
9 and individually.

10 21. Pursuant to Industrial Welfare Commission Order No. 4-2001,
11 California Code of Regulations, Title 8, § 11040, for the period of Plaintiff's
12 employment, Defendants were required to compensate Plaintiff for all overtime,
13 which is calculated at one and one-half (1 ½) times the regular rate of pay for hours
14 worked in excess of eight (8) in a day or forty (40) hours in a week, and two (2)
15 times the regular rate of pay for hours worked in excess of twelve (12) hours in a day
16 of hours worked in excess of eight (8) hours on the seventh consecutive work day in
17 a week.

18 22. Plaintiff WATTS worked more than eight (8) hours in a single workday
19 or forty (40) hours in a single workweek on numerous occasions.

20 23. Plaintiff WATTS was entitled to the above overtime premiums.

21 24. Defendants did not pay Plaintiff premium wages of at least one and one-
22 half times Plaintiff's regular rate of pay for hours worked past eight (8) in a day.

23 25. Defendants did not pay Plaintiff premium wages of at least one and one-
24 half times Plaintiff's regular rate of pay for hours worked past forty (40) in a week.

25 26. Defendants did not pay Plaintiff premium wages of at least two times
26 Plaintiff's regular rate of pay for hours worked past twelve (12) in a day.

27 27. Plaintiff WATTS worked at least one pay period in which he was not
28 properly paid overtime within the three (3) years prior to the initiation of this lawsuit.

1 28. Defendants know or should know the actual dates of overtime worked,
2 the amount of overtime worked, and the amount of unpaid overtime due.

3 29. As a proximate result of Defendants' violations, Plaintiff WATTS has
4 been damaged in an amount in excess of \$28,418 and subject to proof at time of trial.

5 30. Pursuant to Labor Code §§ 218.6, 510, 1194 and California Code of
6 Regulations, Title 8, § 11040, Plaintiff WATTS is entitled to recover damages for the
7 nonpayment of overtime premiums for all overtime hours worked, penalties, interest,
8 plus reasonable attorney's fees and costs of suit.

9 **THIRD CAUSE OF ACTION**

10 **FAILURE TO ITEMIZE WAGE STATEMENTS AS REQUIRED**

11 **UNDER LABOR CODE SECTION 226**

12 **(AGAINST AERIS and DOES 1-5)**

13 31. Plaintiff refers to and incorporate by reference Paragraphs 1 through 30.

14 32. This cause of action is brought against AERIS and DOES 1-5, jointly
15 and individually.

16 33. Pursuant to Labor Code § 226, every employer must furnish each
17 employee an itemized statement of wages and deductions at the time of payment of
18 wages.

19 34. Defendants knowingly and intentionally furnished Plaintiff pay stubs
20 that did not accurately reflect all the information required by Labor Code § 226.

21 35. Plaintiff suffered injury from the lack of proper information on the pay
22 stubs provided by Defendants.

23 36. Plaintiff suffered injury under this cause of action within a period of one
24 (1) year prior to the initiation of this lawsuit.

25 37. Pursuant to Labor Code § 226(e) and (g), Plaintiff prays for judgment
26 against Defendants in an amount subject to proof at trial plus costs and attorney fees.

27 **FOURTH CAUSE OF ACTION**

28 **WAITING TIME PENALTIES UNDER LABOR CODE SECTION 203**

(AGAINST AERIS and DOES 1-5)

38. Plaintiff refers to and incorporates by reference Paragraphs 1 through 37.

39. This cause of action is brought against AERIS and DOES 1-5, jointly and individually.

40. Plaintiff's employment with Defendants was terminated on February 6, 2009.

41. Defendants willfully refused and continue to refuse to pay Plaintiff WATTS unpaid wages as required by Labor Code § 203. Defendants know that the pay is due and are refusing to pay it.

42. Plaintiff WATTS requests damages and penalties as provided by Labor Code § 203 in the amount of \$9,231 and subject to proof at time of trial.

FIFTH CAUSE OF ACTION

OVERTIME PAY AND LIQUIDATED DAMAGES UNDER 29 U.S.C. § 207 and § 216 (AGAINST ALL DEFENDANTS)

43. Plaintiff refers to and incorporates by reference Paragraphs 1 through 42.

44. This cause of action is against all Defendants, jointly and individually.

45. Plaintiff is informed and believes and hereon alleges that Defendants are subject to the provisions of the Fair Labor Standards Act. Under 29 U.S.C. § 207(a) and § 216(b), Plaintiff is entitled to overtime pay at a rate of one and one-half (1 ½) times the regular rate of pay for hours worked in excess of forty (40) hours in a week and an equal additional amount as liquidated damages, as well as costs and attorney's fees.

46. Plaintiff worked numerous weeks in excess of forty (40) hours.

47. Plaintiff was entitled to the above overtime premiums.

48. Defendants failed to compensate Plaintiff for any overtime premiums.

49. This court has jurisdiction over this cause of action because the federal

1 statute specifically grants the employee the right to bring the action in “any Federal
2 or State court of competent jurisdiction.” 29 U.S.C. § 216(b).

3 50. Plaintiff worked at least one week in which overtime premiums were
4 not paid by Defendants under the Fair Labor Standards Act within the two (2) years
5 prior to initiating this lawsuit.

6 51. Plaintiff’s individual employment is covered by the terms of the Fair
7 Labor Standards Act.

8 52. Plaintiff used equipment on the job that had previously been transported
9 in interstate commerce.

10 53. Defendant AERIS was the employer of Plaintiff, as the term “employer”
11 is defined in the Fair Labor Standards Act.

12 54. Defendant AERIS was an enterprise covered by the provisions of the
13 Fair Labor Standards Act for the entire time of Plaintiff’s employment.

14 55. Defendant AERIS conducted business with a total gross sales volume in
15 excess of \$500,000 for each and every twelve (12) month period in which Plaintiff
16 was employed.

17 56. Defendant AERIS employed at least two (2) employees during each and
18 every 12 month period in which Plaintiff was employed. These employees were
19 engaged in commerce and regularly used equipment that had been transported in
20 interstate commerce.

21 57. Defendant JONES was the employer of Plaintiff, as the term
22 “employer” is defined in the Fair Labor Standards Act. JONES was a corporate
23 officer and/or agent of AERIS. JONES acted both directly and indirectly in the
24 interest of AERIS, as it related to Plaintiff’s employment and payment of wages.

25 58. DOES 1-10 were the employer of Plaintiff, as the term “employer” is
26 defined in the Fair Labor Standards Act.

27 59. Defendants’ violations of 29 U.S.C. § 207 were willful and intentional.

28 60. Plaintiff prays for judgment for overtime pay of \$28,418. This amount

1 is subsumed by the overtime pay claimed in the First Cause of Action.

2 61. Plaintiff prays for judgment for liquidated damages in the amount of
3 \$28,418. This amount is supplemental to the relief requested in all other causes of
4 action.

5 62. Plaintiff prays for costs and attorney's fees.

6 **SIXTH CAUSE OF ACTION**
7 **FAILURE TO PAY MINIMUM WAGE IN VIOLATION OF THE FAIR**
8 **LABOR STANDARDS ACT**
9 **AGAINST ALL DEFENDANTS**

10 63. Plaintiff refers to and incorporates by reference Paragraphs 1 through
11 62.

12 64. This cause of action is brought against all Defendants jointly and
13 individually.

14 65. Pursuant to the Fair Labor Standards Act ("FLSA"), payment of less
15 than the minimum wage is unlawful.

16 66. Plaintiff was not paid minimum wage for many of the pay periods in
17 which he performed work.

18 67. Under the FLSA, Plaintiff is to recover compensation for all hours
19 worked but not paid by Defendants.

20 68. Plaintiff was not paid at least the Federal minimum wage for at least one
21 pay period within the two (2) years prior to initiating this lawsuit.

22 69. Defendants' failure to pay minimum wage was willful and intentional.

23 70. As a proximate result of the aforementioned violations, Plaintiff has
24 been damaged in an amount in excess of \$1,280, and subject to proof at time of trial.

25 71. Pursuant to 29 U.S.C. § 216, Plaintiff is entitled to recover damages for
26 the nonpayment of the minimum wage for all hours worked, interest, plus reasonable
27 attorney's fees and costs of suit.

28 72. Pursuant to 29 U.S.C. § 216, Plaintiff is entitled to recover an additional

1 amount equal to the unlawfully unpaid wages as liquidated damages.

2 **SEVENTH CAUSE OF ACTION**

3 **VIOLATIONS OF CALIFORNIA BUSINESS AND PROFESSIONS**

4 **CODE SECTION 17200**

5 **(AGAINST AERIS and DOES 1-5)**

6 73. Plaintiff refers to and incorporates by reference Paragraphs 1 through
7 72.

8 74. This cause of action is brought against AERIS and DOES 1-5, jointly
9 and individually.

10 75. By failing to pay overtime premiums, Defendants' acts constitute unfair
11 and unlawful business practices under Business and Professions Code § 17200, et
12 seq.

13 76. By failing to provide adequate meal and rest breaks, Defendants' acts
14 constitute unfair and unlawful business practices under Business and Professions
15 Code § 17200, et seq.

16 77. By failing to pay at least the minimum wage, Defendants' acts constitute
17 unfair and unlawful business practices under Business and Professions Code §
18 17200, et seq.

19 78. Plaintiff also was paid out time off at a rate less he was due. The failure
20 to pay at the proper rate constitutes an unfair and unlawful business practice.
21 Plaintiff is specifically pleading this as an unfair business practice and not a Labor
22 Code violation.

23 79. Plaintiff WATTS prays for restitution under this Cause of Action in an
24 amount subject to proof at time of trial.

25 **WHEREFORE**, Plaintiff prays for the following relief:
26

27 1. Damages for overtime not paid to Plaintiff WATTS in an amount in excess
28 of \$28,418 and subject to proof at trial.

1 2. For liquidated damages in the amount in excess of \$28,418 and subject to
2 proof at trial.

3 3. Damages for minimum wage not paid to Plaintiff WATTS in an amount in
4 excess of \$1,280 and subject to proof at trial.

5 4. Liquidated Damages for minimum wage not paid to Plaintiff WATTS in an
6 amount in excess of \$1,280 and subject to proof at trial.

7 5. Damages for meal premiums not paid to Plaintiff WATTS in an amount
8 subject to proof at trial.

9 6. For damages and penalties under Labor Code § 226 for Plaintiff WATTS
10 in an amount subject to proof at trial.

11 7. For penalties and damages pursuant to Labor Code § 203 for Plaintiff
12 WATTS in an amount of \$9,231 and subject to proof at trial.

13 8. For restitution and disgorgement for all unfair business practices against
14 Plaintiff WATTS in an amount subject to proof at trial.

15 9. For prejudgment and post judgment interest.

16 10. Cost of suit.

17 11. Attorneys' fees.

18 12. For such other and further relief as the court may deem proper.

19
20 DATED: February 8, 2011

LAW OFFICES OF MICHAEL TRACY

21
22 By:

23 MICHAEL TRACY, Attorney for Plaintiff
24 DAVID WATTS
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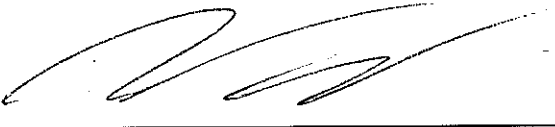
DEMAND FOR JURY TRIAL

Plaintiff demands a jury trial.

DATED: February 8, 2011

LAW OFFICES OF MICHAEL TRACY

By:


MICHAEL TRACY, Attorney for Plaintiff
DAVID WATTS